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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,888	09/16/1999	VICTOR A. RIVAS		8050

7590 10/18/2004
JAMES C WRAY
1493 CHAIN BRIDGE ROAD SUITE 300
MCLEAN, VA 22101

EXAMINER

GRIER, LAURA A

ART UNIT PAPER NUMBER

2644

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/396,888

Applicant(s)

RIVAS ET AL.

Examiner

Laura A Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-27 and 29 is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-2, 6, and 8-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryll in view of Mathews, U. S. Patent No. 5431170.

Regarding **claim 1**, Ryll disclose a pair of sport goggles that provides real time body monitoring information to user, wherein the information includes the heart rate of the user, which constitutes as a pair of eyeglasses for monitoring heart conditions (figure 1 and abstract); electronic circuitry (figures 1, 2 and 6 and col. 5, lines 57-65), and a battery, which indicates a power source (figure 2-reference 42). Ryll does disclose an infrared phototransistor for emitting light, and infrared detector module for receiving light (col. 5, lines 30-55, and figure 5). However, Ryll fails to specifically disclose a plurality of lighting emitting diodes on the glasses, and a plurality of photosensors on the glasses (herein, "LEDs and photosensors", respectively), and the light emitting diodes and photosensors positioned on a plane offset from each other. The examiner maintains that such LEDs and photosensors were well known in the art.

Regarding the LEDs and photosensors, in a similar field of endeavor, Mathews discloses a pulse responsive device which may be worn about the head of a user. Mathews device comprises a sensor unit including two light emitters and two light sensors (col. 3, lines 28-35),

which constitutes as a plurality of LEDs and a plurality of photosensors, and further indicates that the light emitters and light sensors are positioned in a plane offset from each other, respectively, a light emitter and a light sensor are positioned accordingly (figure 2, references 20 and 22 – light emitters, and references 21 and 23 – light sensors).

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a plurality of light emitters (LEDs) and light sensors (photosensors) for the purpose of enhancing eyewear for optimal functions as desired for analyzing the electrical signal of the output of the light emitter/light sensor on a continuous basis, regarding a particular parameter such as pulse rate, etc. as taught by Mathews.

Regarding **claim 2**, Ryll, and Mathews (herein, Ryll et al.) discloses everything claimed as applied above (see claim 1). Ryll further discloses a battery, which constitutes a power supply.

Regarding **claims 8 and 9**, Ryll et al. discloses everything claimed as applied above (see claim 1). Ryll discloses display (48) in respect to figure 8 that provides a display which may be used in sports goggles for indicated a sensed condition, including a numerical display of the user's heart rate and pulse (col. 6, lines 61-67 and col. 7, lines 1-41).

Regarding **claim 10**, Ryll et al. discloses everything claimed as applied above (see claim 1). Mathews further discloses mean of inputting preset data of the user to be used for comparing the sensed condition (col. 4, lines 4-54).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing inputting preset data of the user to be

used for comparing the sensed condition, providing optimal monitoring techniques of the users pulse rate.

Regarding **claim 6**, Ryll et al. discloses everything claimed as applied above (see claim 1). Mathews further discloses transmitting a sensed signal to a read-out device (col. 3, lines 42-44), which is indicative of a remote receiver.

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a radio transmitter for transmitting a sensed signal to the device located on the wrist of the user for providing free the sensed signal of noise as taught by Mathews or other desired reasons for the optimizing the function of the device.

3. **Claims 3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryll et al. and further in view of Vogt.

Regarding **claims 3 and 4**, Ryll et al. discloses everything claimed as applied above (see claim 1). However, Ryll fails to specifically disclose the power supply as a solar cell.

Regarding the solar cell, Vogt et al. discloses a pair of eyeglasses with a power supply consisting of at least one solar cell with a solar panel, and further Vogt discloses the solar cell in conjunction with a battery (col. 7, lines 20-33).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Ryll by providing a solar cell for the power source for the

purpose of utilizing the readily available solar energy and converting it into electrical energy and thus making the device of Ryll energy efficient.

Allowable Subject Matter

4. **Claims 11-27 and 29** are allowed.
5. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 07/07/04 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the applicant argues the lack of motivation to combine Ryll and Mathews. Eventhough, the two devices of Ryll and Mathews differ, both devices are usable about the head of a user. Therefore, it obvious to one of ordinary skill the combine the teaching of Mathews with Ryll merely because Mathews discloses light emitters and light sensors offset from each

other in a headband worn by a user, if such effect can take place in a headband, then the same effect is obvious for a pair of glasses worn about the head of user.

In respect to the applicant's argument of claim 5, which has been cancelled and combined into claim 1, the issue of this argument is moot because the issue of this limitation was addressed the Office Action dated April 5, 2004.

In respect the applicant's argument of claim 6, the claimed limitation is supported by Mathews, the secondary reference.

In respect the applicant's argument of claim 8 and 9, Ryll clearly indicates the lenses as visual means for projecting of various information to the user (col. 9, lines 26-38, col. 11, lines 35-48 and abstract). And further the rejection is maintained in respect to the broadest interpretation of the claim language, the claim language fails to limit the meaning of "display".

In respect the applicant's argument of claim 10, Ryll addresses the claim language as evident by the fact that the user may be able to select information from memory for later use or retrieval (col. 12, lines 23-30); and in respect to Mathews, with Ryll comprising various switches, etc., it would have been obvious to one of the ordinary skill to modify Ryll by implementing the actuation buttons of Mathews on his goggles.

In respect the applicant's argument of claims 3 and 4, Vogt is merely used to show that use of solar cell for supplying power in glasses is well known, and used to replace an actually battery if desired and efficient the device in question.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Laura A. Grier
October 14, 2004

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XU MEI
PRIMARY EXAMINER